INTERAGENCY ADVISORY GROUP

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Minutes of the IAG Committee on Labor Management Relations

October 2, 1979

Anthony Ingrassia, Assistant Director for Labor-Management Relations, chaired the meeting which dealt primarily with agency reactions to the FLRA's Interim Regulations. Members of the FLRA present to hear and discuss these reactions were Chairman Ronald W. Haughton, Members Henry B. Frazier and Leon B. Applewhite, and General Counsel H. Stephan Gordon.

The IAG and FLRA members were given copies of the attached summary of agency comments. Mr. Ingrassia briefly expanded on each of the enumerated comments.

Before going to specific issues in depth, Mr. Haughton noted that the Authority shares the view that major policy statements should be used sparingly. He further suggested that the time problem in review of arbitration awards might best be remedied by requesting that the arbitrator simply include the central office (or other responsible program office) as one of the service parties. Mr. Haughton also reminded agencies that comments made at this IAG meeting should also be submitted in writing to the FLRA to assure full consideration.

Mr. Gordon explained that some of the apparent discrepancies in investigative procedures is a result of the fact that his organization is so new, and that these problems should disappear with time.

Mr. Ingrassia emphasized the problem of the short time frames for negotiability appeals, and Authority members were informed that in many instances the negotiability appeal process cuts off dialogue between the parties concerning possible alternative language. It was suggested that the 5 day time period be extended, and that there be a requirement that the Parties attempt to resolve the issues. It was also noted that some special rules may be needed for negotiability disputes resulting from agency head review of agreement language.

Mr. Ingrassia noted that a literal reading of the regulations could lead to an interpretation that National or Government-wide Consultation Rights extend not only to national unions but to councils or locals within national unions as well. It was his view that such an interpretation was unwarranted and unworkable. He urged that the regulations be revised to clearly limit such rights to the parent organization. The Authority did not give an opinion, but stated this might be an issue arising in a future case.

A discussion ensued over the pre-charge period in ULPs, which was previously contained in the FLRC's Rules and Regulations. Mike Rudd from VA noted that 80% of their ULP charges had been resolved in the informal stage under Executive Order. Despite comments that agencies feel the parties become "locked into" their positions once a written charge is filed with the Authority, Mr. Gordon maintained that the General Counsel's office will continue to encourage settlement and that the parties' options regarding settlement will not be significantly altered by the lack of an informal stage.

The issues of the availability of information from an investigation of an unfair labor practice and the conduct of investigations were discussed at length. Mr. Gordon feels that initial confidentiality is essential to a good investigation, but promises that if a complaint issues, all parties will be given the information needed to deal with the complaint. Regarding the companion issue of a right to be represented at an investigation of a ULP, Mr. Gordon noted that the person being investigated had a personal right to a representative which would not be abridged. While union or management would not ordinarily have the right to be present, unless voluntarily requested by the interviewee, there may be consideration given to allowing management or the union to be present if the person being questioned can bind management or the union.

It was noted that despite any other time limits, cases involving alleged work stoppages and emergencies of that nature would be expedited. However, it was the Authority's view that any time limit set by statute could not be extended or waived by the Authority.

Mr. Ingrassia thanked the Authority members for their participation, and announced that OPM's response to GAO's inquiry on the use of official time and recordkeeping will be discussed at the next IAG, which will be held on October 11, 1979.

Mr. Ingrassia noted that in FLRA No. 116, the National Science Foundation case, the FLRA found an unfair labor practice based on untimely notification to the union of a RIF. However, it did not reach the issue urged before it, namely, whether only emergency situations will allow management to implement a managment rights action, when good faith negotiations on impact and implementation have not timely resulted in an agreement or impasse.

Mr. Ingrassia asked that agencies consider their Consultant subscriptions, noting that it serves as a valuable source of information for managers, supervisors and others who are not labor relations practitioners. He also noted that a new Executive Order on Safety and Health is expected to be issued in the near future.

Attachment

ATTACHMENT

Agency Comments Made at 1979 Collective Bargaining Symposium for Labor Relations Executives (Williamsburg, Va.), in Connection with FLRA Role and Procedures

1. Applaud philosophy expressed by General Counsel to encourage voluntary settlement as well as pragmatic and non-automatic approach to posting.

2. Sharply urge reconsideration of 30 day informal ("pre-charge" charge) period, and inclusion in rules.

3. A true effort at voluntarism suggests that regulations be amended to provide that respondent will see correspondence provided by charging party to General Counsel.

4. Concern expressed at conduct of field agents: appeared at activity without announcing their presence and purpose, engaged in bargaining tactics, i.e., in multiple issue cases, accept one, dismiss two.

5. Confusion regarding the rights of an individual to representation during the investigation of ULP charge. When allowed, when denied, what about affidavits?

6. Management should have the right to have a representative present when a supervisor or management official is being interviewed by a field agent. Question: does the union have the right to be present when a unit employee is being interviewed?

7. FLRA might cut down backlog by consolidating cases with same or similar issues, even if it cuts across agency and union lines.

8. Time for appealing arbitration awards should not begin on date of award, that can be significantly before the date the agency receives it. At least arbitrators should be required to date the award on the date mailed, not the date dictated or typed.

9. Five days are not enough for management to reply in writing on whether or not a union proposal is negotiable. Should at least have the 15 days that the union has to appeal to FLRA.

10. Unit decisions should be delegated to FLRA Regional Directors. Appeals from the decisions should not be accepted automatically, but on the same basis as in the past by FLRC. However, appeals should be accepted without requiring that an election first be held.

11. There is a basic problem in negotiability cases wherein the union gets to reply after it sees the management brief, but management has to file its brief often with nothing more from the union than the naked words of the proposal, or an assertion that it is negotiable.

12. FLRA should resist overuse of major policy statements.

13. When considering consolidation cases, FLRA should provide more definitive explanation of effective dealings and efficiency of agency operations.

14. Concern that NLRB procedures will be slavishly followed and FLRA will fail to recognize significant differences in Federal sector. With respect to "pre-charge" charge, VA says it can produce statistics to show 80-85% resolution of charges during informal period.